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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,467	07/11/2002	Martin John Charles Offa-Jones	THOM-0020	4678

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EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 85

10/070,467

Applicant(s)

OFFA-JONES, MARTIN JOHN
CHARLES

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12092004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

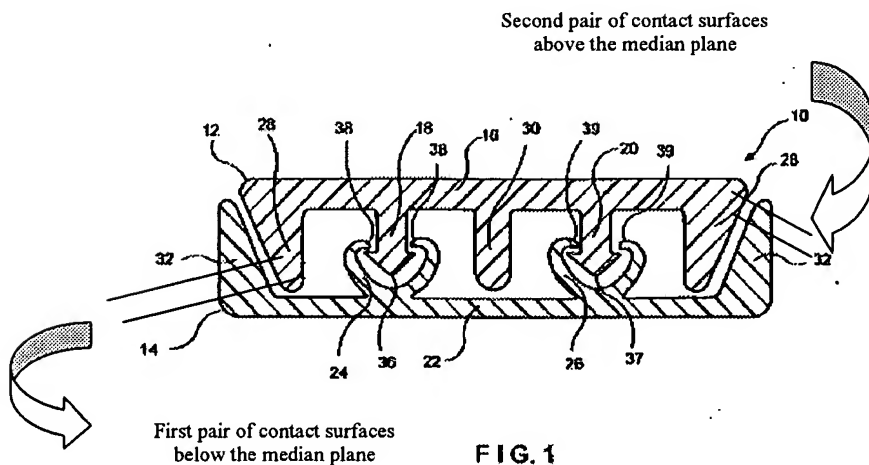
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 16 is rejected under 35 U.S.C. §102(e) as being clearly anticipated by Malin (US 6167597).

Malin (figure 1) teaches a reclosable fastener for bags, comprising a first element 12 comprising a first elongate body portion 16, at least one first upstanding elongate profiled member 18, 20 extending away from the first body portion, a first upstanding post comprising a wedge-shaped member 28 at a first lateral margin of the first body portion, and a first heel comprising an identically configured wedge-shaped member 28 at a second lateral margin of the first body portion; a second element 14 comprising a second elongate body portion 22, at least one second upstanding elongate profiled member 24, 26 extending away from the second body portion, a second upstanding post comprising a wedge-shaped member 32 at a first lateral margin of the second body portion, and a second heel comprising an identically configured wedge-shaped member 32 at a second lateral margin of the second body portion; wherein the first and second profiled members are releasably engagable when the first and second elements are pressed together with the first and second profiled members facing each other in order to produce

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an engaged condition of the first and second elements; and wherein, in the engaged condition, both the first post and the second heel, and the second post and the first heel, are aligned and are arranged to contact each other at respective complementarily angled contact surfaces thereof to form a configuration which provides resistance to compression forces exerted on the first and second elements in their engaged condition thereby substantially preventing distortion of the first and second profiled members under application of a load urging the first and second elements together when in their engaged condition (col. 4, lines 36-61). Pairs of contact surfaces can easily be chosen so as to lie to respective opposite sides of a median plane of separation lying between the first and second body portions, the contact surfaces being angled relative to the median plane and offset therefrom in respective opposite directions perpendicular thereto. There is nothing in the claim language precluding such a labeling.



The high compression members function in the following manner. As one or both of the interlocked male and female profiles 12, 14 are sealed to thermoplastic film, such as by seal bars, the profiles are compressed together. This compression causes the opposing wedge-shaped high compression members 28, 32 on the male and female profiles 12, 14 to contact each other and the central high compression member 30 of the male profile to contact an inner surface 34 of the female profile base 22. The lengths of the high compression members are such that said contacts occur before the extremities 36, 37 of the male interlocking members 18, 20 contact the female profile 14, or the extremities 38, 39 of the female interlocking members 24, 26 contact the male profile 12, and thereby damage or distort the interlocking members. In addition, the high compression members are much thicker than the male and female interlocking members, thereby ensuring that the high compression members themselves do not distort during sealing or become sealed to the opposing profile.

In this manner the high compression members prevent distortion and crushing of the interlocking members and enable the profiles to be sealed to thermoplastic film across the widths of their bases. In the absence of the high compression members the interlocking members would be distorted and/or crushed by the heater bars, rendering the zipper strip unusable.

Applicant is reminded that the transitional term “comprising”, which is synonymous with “including,” “containing,” or “characterized by,” is inclusive or open-ended and does not

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exclude additional, unrecited elements or method steps. See, e.g., *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.); *Moleculon Research Corp. v. CBS, Inc.* 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin (US 6167597) in view of Bentsen (US 4673383).

Malin (figure 1) teaches a reclosable fastener for bags, comprising a first element 12 comprising a first elongate body portion 16, at least one first upstanding elongate profiled member 18, 20 extending away from the first body portion, a first upstanding post comprising a wedge-shaped member 28 at a first lateral margin of the first body portion, and a first heel comprising an identically configured wedge-shaped member 28 at a second lateral margin of the first body portion; a second element 14 comprising a second elongate body portion 22, at least one second upstanding elongate profiled member 24, 26 extending away from the second body portion, a second upstanding post comprising a wedge-shaped member 32 at a first lateral margin of the second body portion, and a second heel comprising an identically configured wedge-

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shaped member 32 at a second lateral margin of the second body portion; wherein the first and second profiled members are releasably engagable when the first and second elements are pressed together with the first and second profiled members facing each other in order to produce an engaged condition of the first and second elements; and wherein, in the engaged condition, both the first post and the second heel, and the second post and the first heel, are aligned and are arranged to contact each other at respective complementarily angled contact surfaces thereof to form a configuration which provides resistance to compression forces exerted on the first and second elements in their engaged condition thereby substantially preventing distortion of the first and second profiled members under application of a load urging the first and second elements together when in their engaged condition (col. 4, lines 36-61). Pairs of contact surfaces can easily be chosen so as to lie to respective opposite sides of a median plane of separation lying between the first and second body portions, the contact surfaces being angled relative to the median plane and offset therefrom in respective opposite directions perpendicular thereto. There is nothing in the claim language precluding such a labeling. The difference is that the upstanding profiled members of the releasably engageable portions are male and female members. However, Bentsen (figures 1, 2) teaches that it is old and well known to use two hooks on opposite fastening elements that are engageable with each other so as to form a better seal for bags via a simpler structure. As it would be desirable to simplify the structure of Malin, it would have been obvious to modify the fastener of Malin so that the upstanding profiled members of the releasably engageable portions are hooks not male and female portions in view of Bentsen (figures 1, 2) teaching that it is old and well known to use two hooks on opposite fastening elements that are engageable with each other so as to form a better seal for bags. As to claim 11, it would have

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been obvious to modify the fastener of Malin so that ribs are used to secure the base member to the web or film in view of Bentsen teaching reclosable closure structure with a flange extending to the right on the upper member in figure 1 and to the left on the lower member in figure 1 wherein ribs 17 are placed so that there is a single rib at the ends of the flanges so as to have securement at the edges of the flanges and there are ribs positioned in alignment with the hooked engagement members. As Bentsen teaches that it is desirable to have ribs extending over the entire surface of the fastener opposite the hooked members so as to have good securement of the fastener to the substrate, it would have been obvious to modify the fastener of Malin to have ribs in alignment with the post and heel so as to have good securement over the entire width of the fastener.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin (US 6167597) in view of Bentsen (US 4673383) as applied to claim 11 above, and further in view of Custer et al. (US 5216787).

Further modification of the fastener of Malin so that sealant material is coextruded onto each rib as shown by Bentsen would have been obvious in view of Custer et al. (figure 3) teaching that it is desirable to do so in order to have intermediate ribs 325 between the closure and adhesive ribs that act as a tie material to better match the material of the closure to that of the adhesive wherein it is desirable to have the materials co-extruded so that there is a stronger securement. Further modification of the fastener of Malin so that the sealing material is EVA would have been obvious in view of Custer et al. (col. 10, lines 20-24) who teach the use of EVA as being desirable for its bonding qualities.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malin (US

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6167597) in view of Kapperman et al. (US 6004032).

Malin (figure 1) teaches a reclosable fastener for bags, comprising a first element 12 comprising a first elongate body portion 16, at least one first upstanding elongate profiled member 18, 20 extending away from the first body portion, a first upstanding post comprising a wedge-shaped member 28 at a first lateral margin of the first body portion, and a first heel comprising an identically configured wedge-shaped member 28 at a second lateral margin of the first body portion; a second element 14 comprising a second elongate body portion 22, at least one second upstanding elongate profiled member 24, 26 extending away from the second body portion, a second upstanding post comprising a wedge-shaped member 32 at a first lateral margin of the second body portion, and a second heel comprising an identically configured wedge-shaped member 32 at a second lateral margin of the second body portion; wherein the first and second profiled members are releasably engagable when the first and second elements are pressed together with the first and second profiled members facing each other in order to produce an engaged condition of the first and second elements; and wherein, in the engaged condition, both the first post and the second heel, and the second post and the first heel, are aligned and are arranged to contact each other at respective complementarily angled contact surfaces thereof to form a configuration which provides resistance to compression forces exerted on the first and second elements in their engaged condition thereby substantially preventing distortion of the first and second profiled members under application of a load urging the first and second elements together when in their engaged condition (col. 4, lines 36-61). Pairs of contact surfaces can easily be chosen so as to lie to respective opposite sides of a median plane of separation lying between the first and second body portions, the contact

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surfaces being angled relative to the median plane and offset therefrom in respective opposite directions perpendicular thereto. There is nothing in the claim language precluding such a labeling. The difference is that neither fastener element has a flange. Further modification of the fastener of Malin so that a single flange is provided on only one of the two interengaging elements of the fastener for engagement to a film or web would have been obvious in view of Kapperman et al. (figure 11) teaching a reclosable fastener comprising a male/female 152, 154 closure between a pair of opposed base members secured to package walls 156, 158 respectively, wherein a single flange extends upwardly from the female member 154 and is inherently capable of being used for attachment of the closure to a web or film through the statement that the female profile 154 is secured to a package wall 158 (col. 9, lines 44-45). There are no flanges extending from either side of the base of the male member 152.

Information Disclosure Statement

The PTO-1449 Modified provided by applicant with the information disclosure statement received December 9, 2004 is being returned with all documents lined through. Every document listed on this form was cited on form PTO-892 mailed to applicant on March 13, 2003 and no gain is seen from repeatedly listing these documents.

Response to Arguments

Applicant's arguments filed December 9, 2004 have been fully considered but they are not persuasive. Applicant argues that with respect to figure 1 of Malin that

In fact, with reference to the individual embodiments of the Malin patent, in Figure 1, the angled contact surfaces of the marginal high compression members 28 and 32 of the respective fastener parts lie to both sides of the median plane and are not offset therefrom.

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There is no doubt that the angled contact surfaces of the marginal high compression members 28 and 32 of the respective fastener parts lie to both sides of the median plane, but there is nothing in the claim construction that prohibits this because portions of the angled contact surfaces are clearly offset to opposite sides of the median plane. Applicant has chosen to utilize the open-ended language “comprising” and this language fails to prohibit added structure such as that shown by Malin.

Applicant further argues that “post” and “heel” are structurally distinct from each other. However, these terms are broad and there are no features or dimensions claimed that would distinguish one from the other. The angled surface toward the end of a post contacts an angled surface adjacent the opposite base considered to be a heel. While obviously, there are features and dimensions disclosed that distinguish a “post” from a “heel”, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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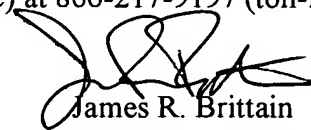
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222.

The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB